

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Biennial Regulatory Review – Amendment)
of Part 0, 1, 13, 22, 24, 26, 27, 80, 87, 90,)
95, 97, and 101 of the Commission's Rules)
to Facilitate the Development and Use of)
the Universal Licensing systems in the)
Wireless Telecommunications Services)

WT Docket No. 98-20

Comments of AT&T Wireless Services, Inc.

AT&T Wireless Services, Inc., (hereinafter referred to as "AWS"), by its attorneys, hereby submits its comments in the above-captioned proceeding.¹ In support of its comments AWS states as follows:

Introduction

AWS is the licensee of hundreds of Title III radio licenses issued by the Wireless Telecommunications Bureau ("WTB") in the Cellular, Broadband PCS, Narrowband PCS, Paging, Air-to-Ground Radiotelephone, Point-to-Point Microwave, Business Radio, Private Operational Fixed, Private Carrier Paging and other services. AWS submits numerous applications each year including short form applications, long form applications, modification applications, initial applications and renewal applications. AWS has used the Commission's electronic filing system for short form and long form applications submitted

¹ In the Matter of Biennial Regulatory Review – Amendment of Part 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, *Notice of Proposed Rule Making*, FCC 98-25, ___ FCC Rcd ___ (released March 18, 1998) (hereinafter "NPRM").

for auctionable services and is otherwise familiar with the operations of the ULS system. It has also submitted numerous antenna structure registrations electronically. As a result, the decision reached by the Commission in this proceeding will have a direct impact on AWS.

AWS agrees that the goal of this proceeding should be to “establish a simplified set of rules that (1) minimizes filing requirements as much as possible; (2) eliminates redundant, inconsistent, or unnecessary submission requirements; and (3) assures ongoing collection of reliable licensing and ownership data.”² Indeed, the proposals set forth in the NPRM generally accomplish the intended result and should result in wireless service providers devoting fewer resources to filing applications with the Commission and more resources to providing competitive wireless services to the public. Nonetheless, AWS believes that certain modifications should be made to the proposals described in the NPRM to make the filing process as efficient as possible.

Electronic Filing and New Forms

Consolidation of Application Forms. AWS supports the Commission’s proposal to consolidate more than 40 forms used for WTB applications into a lesser amount. The use of a common application filing platform is beneficial because it serves to avoid confusion and creates uniformity in the application filing process. Notwithstanding the foregoing, certain additional modifications could be made to the proposed forms and related instructions.

FCC Form 601. AWS supports the Commission’s proposal to eliminate the

² NPRM, par. 8.

requirement that an auction winner must file separate "long forms" for each market area in which it is the successful high bidder. This will reduce the time it takes to prepare long form applications and will minimize the potential for inadvertent, minor errors from being repeated in applications that are otherwise identical. However, AWS suggests that separate file numbers be assigned to individual market areas included in a single long form. The use of separate file numbers will serve to ensure that petitions, amendments and/or other correspondence that are relevant only to one market area are correctly associated with the market area at issue.

FCC Form 602. AWS fully supports the Commission's proposed use of the 602 Form as the form on which ownership information will be submitted. It further supports the Commission's proposal to require the submission of an update to the 602 Form when changes occur rather than having to submit a new 602 Form with every application. However, there are two significant changes that should be made to the proposals in the NPRM.

First, items 40 through 44 on Alien Ownership and items 45-48 on Basic Qualifications in the 601 Form Main Form should be deleted and should be included in the 602 Form. Items 40-48 of the 601 Form should be replaced by the following two additional certifications: the Applicant complies with (1) the alien ownership rules and (2) the basic qualification rules. Making this change will serve to eliminate the need to complete items 40-48 each time a 601 Form is filed thus reducing the filing burden on the application preparer. Moreover, the information in items 40-48 of the 601 Form Main

Form is properly included in the 602 Form since it is a form designed to "supersede" the current 430 Form³ on which those questions are presently asked.

Second, and more importantly, the FCC should revise the information required to be submitted in the 602 Form as well as the information required to be submitted pursuant to Section 1.2112 to reflect more reasonable ownership information that is relevant to the Commission's evaluation of an application. This is especially true for large publicly held corporations whose capital structures are complex and which may have hundreds of officers and directors who have no involvement in the day to day operations over the subsidiary that is engaged in the telecommunications business. The FCC, therefore, should not require a listing of any FCC-regulated business for all officers, directors, attributable shareholders and key management personnel. Instead, the disclosure requirement should be made applicable only to officers and directors, attributable shareholders and key management personnel who are actively involved in the day to day operations of the filer of the 602 Form or those persons who have "authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence, (i) the nature or types or services offered by such licensee; (ii) the terms upon which such services are offered; or (iii) the prices charged for such services"⁴

The FCC should also narrow the scope of the term "any FCC-regulated business" in Section 1.2112(a)(1) to a more reasonable listing of FCC-regulated businesses that is based on and intended to elicit useful information for the Commission and the public. The term "any FCC-regulated business" could include CMRS providers, PMRS providers,

³ NPRM, n. 71.

⁴ See, Section 20.6(d)(9).

resellers (wireless and wireline), equipment manufacturers, garage door opener manufacturers, tower owners, LECs, CLECs, CATV companies, airlines, power companies, medical device manufacturers and many others who are dependent in "any" manner on an FCC authorization, equipment approval or are otherwise regulated in "any" way pursuant to the Communications Act and the Commission's rules. Clearly, the Commission has an interest in obtaining information that will enable it and the public to determine if an entity is in compliance with all rules. However, the reporting burden currently being imposed by Section 1.2112 and the 602 Form is overbroad and is an excessive burden without countervailing public benefit.⁵

Likewise, a requirement that licensees report holders of 10% or more of each class of stock, warrants, options or debt securities is unworkable for large public corporations and unlikely to produce meaningful information for the Commission. The Commission should only require disclosure of any party holding 10% or more of any class of security with voting rights.⁶ For those entities that claim a special eligibility status to participate in an auction or for those entities that claim credit as a designated entity thereby entitling the entity to a bidding credit or other favorable treatment in an auction, the Commission could require more ownership information designed to show that the special status and/or bidding credit is legitimate.

⁵ The FCC should clarify the meaning and intent of Section 1.2112(a)(3) since at best it appears to be redundant when compared to Section 1.2112(a)(1) and at worst it is unintelligible. Also, the FCC should clarify that information required by Section 1.2112(a)(5) is applicable only to 602 Form filers who claim status as a designated entity under Section 1.2110.

⁶ There is no need to include non-voting instruments with conversion rights into voting securities because the Commission could require the filing of an amended 602 Form upon any conversion that creates a 10% or greater interest in voting securities.

FCC Forms 603 and 604. AWS proposes that the Commission should combine the 603 and 604 Forms into a single form to be used to file for assignment and/or transfer applications. Taking this action will make the filing process more efficient without any detriment to the processing of assignment and transfer applications. While it is true that certain information regarding assignments is different than that for transfers, the information which is different is relatively minor. This information could readily be included in a combined assignment/transfer form without creating a reporting burden on the parties to a transfer/assignment application or upon the staff of the Commission.

In addition to the foregoing, a combined assignment/transfer form makes sense from a transactional standpoint. For a variety of tax and other valid business reasons, it is not unusual today for sales or transfers of facilities to have multiple stages that occur simultaneously or almost simultaneously upon closing. It would be less resource intensive and more efficient if complex, multi-stage assignment and transfer transactions could be filed using one application form rather than multiple forms.

Similar to the foregoing, and consistent with the Commission's goal of minimizing filing requirements, AWS submits that the 603 and 604 Forms (or a consolidated form which covers both assignments and transfers) should be allowed to be used for all WTB licenses involved in a single transaction. That is, if a transaction involves licenses under any of the various rule parts subject to the jurisdiction of the WTB, then all licenses involved in the transaction should be processed using one and only one assignment/transfer form.

Transactions for the assignment or transfer of wireless systems often involve numerous licenses issued under separate rule parts. For example, the sale of a cellular

system might involve Part 22 cellular licenses; Part 90 Business Radio licenses and Part 101 Point-to-Point Microwave licenses. Based on present processing requirements, a variety of different forms would have to be filed in order to obtain Commission consent to the assignment of the authorizations. While all forms would be sent to the Mellon Bank in Pittsburgh for processing of the required filing fees, the forms would then be distributed to different branches of the WTB, some of which are located in Washington and some of which are located in Gettysburg. Public Notices (for those licenses for which Public Notice is necessary) would be issued at different times, thereby resulting in different dates for filing petitions to deny⁷ that relate to the same transaction. The foregoing process also results in multi-license assignment/transfer applications having different grant dates and different dates by which the transaction need be consummated. As a result, extensions of time to consummate multi-license transactions are often submitted to ensure that all required authorizations are received.

In the spirit of making the assignment/transfer process more efficient, AWS submits that the FCC should (1) allow a single assignment/transfer form to be used for all authorizations which are subject to the jurisdiction of the WTB; (2) issue a single public notice listing all facilities which are subject to the assignment/transfer transaction; and (3) take action on the single application at one time.

Mandatory Electronic Filing. AWS supports a requirement that WTB applications be submitted electronically. Not only will electronic filing make application

⁷ AWS is aware that in certain larger transactions, the Commission has exercised its discretion to issue one Public Notice for all assignment/transfer applications in a common transaction. However, that is a process generally reserved for larger transactions not available for the many multi-license assignment/transfer applications that are filed with the FCC on a daily basis.

filing easier and quicker, it will serve to ensure that all applications are in identical or virtually identical format. The similarity in format will facilitate processing which will serve to expedite action on applications and make sure that service to the public commences as quickly as possible. Electronic filing should encompass all documents, exhibits and attachments⁸ associated with a given filing, including applications, pleadings and notifications. Failure to require all information associated with an electronically-filed application to be submitted in electronic format will significantly reduce the efficiencies to be gained by the electronic filing process. However, due to the problems that are undoubtedly going to occur with a remote, electronic filing process from time to time, it is necessary for the FCC to make provision in the rules to allow for manually-filed applications when it is impossible to file electronically.

Elimination of Microfiche Submission. AWS strongly supports the elimination of the requirement to submit microfiche copies of applications and related documents as well as the need to file hard copies. As long as the ULS system works efficiently and filers can obtain confirmation that a filing has been received in proper format, there is no need to engage in redundant filing requirements such as filing microfiche and/or hard copies of documents.

Standardization of Procedural Rules in Part 1.

AWS supports the Commission's efforts to standardize and consolidate procedural rules in the various services regulated by the WTB. Inconsistent procedural rules serve no useful purpose. However, the Commission's proposals are in some instances beneficial and

⁸ The requirement to electronically submit all exhibits and attachments with a given filing may require that certain materials be scanned and converted to an electronic format.

in other instances create unnecessary burdens upon WTB applicants and licensees.

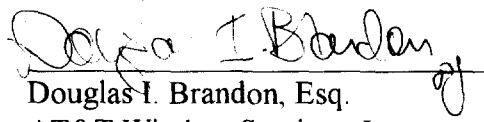
For example, AWS fully supports the Commission's proposal to require Part 90 applicants for assignments or transfers to notify the Commission that a particular assignment or transfer has been consummated. Making the Part 90 and Part 22/24 rules consistent in this regard is a more efficient manner of maintaining the Commission's database. It is easier not to make a change to a database (when Part 22/24 assignment or transfer is not consummated) than it is to change the database (when a Part 90 assignment or transfer is not consummated).

On the other hand, AWS notes that while the Commission proposes to make the treatment of major and minor amendments more consistent, its proposals fail to go far enough in certain instances. For example, for services which are licensed on a site specific basis such as the Part 22 paging service, the FCC proposes to continue to treat any change in geographic coordinates as a major change. Yet, in the Point-To-Point microwave service which is also licensed on a site specific basis, the Commission proposes to continue to allow licensees/applicants to treat changes in geographic coordinates of up to 5 seconds as minor. Because inadvertent errors can be made in establishing the coordinates for a given site or an applicant can lose a transmit site for causes beyond its reasonable control, AWS submits that some flexibility should be afforded to all WTB licensees who are licensed on a site specific basis. Specifically, a change in coordinates of up to 5 seconds for facilities licensed on a site specific basis should be considered minor provided no harmful interference occurs as a result thereof.

Conclusion

AWS generally supports the Commission's proposals to streamline the application filing process for facilities licensed by the WTB. It also supports the proposal to require WTB applications and associated documents and pleadings to be filed electronically. Both proposals will reduce the burdens upon the Commission and the public and will allow competitive wireless services to be deployed in the market more quickly. However, the Commission can, and should, use this proceeding to further streamline the application filing process and modify its rules as discussed above.

Respectfully submitted,


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